

**Meeting Minutes — Bar Harbor Planning Board
Wednesday, December 1, 2021 — 4:00 PM
Council Chambers — Municipal Building — 93 Cottage Street**

**ORIGINAL
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I. CALL TO ORDER

Chair Tom St. Germain called the meeting to order at 4:01 PM. Planning Board members present were Chair St. Germain, Vice-chair Joe Cough, Secretary Millard Dority, Member Ruth Eveland and Member Elissa Chesler.

Town staff members present were Planning Director Michele Gagnon, Code Enforcement Officer Angela Chamberlain and Assistant Planner Steve Fuller.

Sam Coplon, Jeff Cumming, John Fitzpatrick, Michael McKernan, Stephen Salsbury, David Witham and Town Manager Cornell Knight were also present.

II. ADOPTION OF THE AGENDA

Secretary Dority moved to adopt the agenda. Vice-chair Cough seconded. Chair St. Germain asked if there was any need to modify the agenda to accommodate the request of applicant Island Housing Trust/Jones Marsh; who had asked if the plan could be modified to reflect a mislabeled right-of-way for a road. Planning Director Gagnon said it was up to the board but it would be prudent to add the agenda item. **Secretary Dority amended his motion to move to approve the agenda with the addition of the Jones Marsh issue under item “VII. Other Business” as item a. Vice-chair Cough amended his second. The vote in favor of the motion as amended was unanimous, 5-0.**

III. EXCUSED ABSENCES

None.

IV. PUBLIC COMMENT PERIOD

Chair St. Germain opened the public comment period. No one present in the Council Chambers had any comments to offer, and Chair St. Germain then closed the public comment period.

V. APPROVAL OF MINUTES

a. October 27, 2021

Chair St. Germain noted he was not at the October 27, 2021 Planning Board meeting and thus would not be voting. **Secretary Dority moved to approve the minutes, and Ms. Chesler seconded. The vote in favor of the motion was 4-0, with Chair St. Germain not voting.**

VI. REGULAR BUSINESS

a. Public Hearing on Land Use Amendment for LU-2021-01 - Oceanarium and Education center

Project Location: The property is located off Route 3 - Bar Harbor Tax Map 212, Lot 35. The parcel encompasses a total of ±19.26 acres, according to town tax records. The subject land is in the Shoreland Limited Residential district.

Applicant/Owner: Jeff Cumming, 1351 State Highway 3, Bar Harbor, ME 04609

Application: The applicant is proposing that the current Shoreland Limited Residential zoning for the Oceanarium parcel be changed to the Marine Research District. This will allow for the continuation of and improvements to an educational and scientific facility that has been part of the Bar Harbor landscape for 50 years. The di minims amount of land off Route 3, located in the Town Hill Residential district, is not part of this application and will remain in the Town Hill Residential District.

Sam Coplon, representing the applicant, introduced the project. The Oceanarium and Education Center is a nonprofit that recently bought the Oceanarium property with the intent of expanding the programming and educational outreach as well as creating a platform for scientific research there, said Mr. Coplon.

Mr. Coplon gave some history of the Oceanarium, which was developed as Aqualand in the 1960s, before the present-day Land Use Ordinance (LUO) existed. It has operated as an oceanarium/scientific area since it was founded. It was expanded in 1990; the current owners bought it last year from the Mills family. It is presently zoned as Shoreland Limited Residential, explained Mr. Coplon, which makes anything on the property (except the small trailer), a nonconforming use. Any expansion, improvements or upgrades for accessibility outside of the building envelop itself are not possible as they would be an expansion of a nonconforming use.

For that reason, said Mr. Coplon, it made sense to rezone the property into the Marine Research District. The MDI Biological Laboratory encountered a similar issue in the 1990s, he said, and was rezoned to the newly created Marine Research District, a process he was involved in. In this case an applicable zone for the Oceanarium property already exists (Marine Research) and does not need to be created. The parcel is isolated, he said, surrounded by Route 3, tidal river and a salt pond. There are few neighbors.

Secretary Dority disclosed that he had worked closely with Coplon Associates at College of the Atlantic. He said he would be happy to recuse himself if anyone felt there was an issue.

Vice-chair Cough moved that Secretary Dority did not have a conflict of interest in the matter. Ms. Chesler seconded. The vote in favor of the motion was 4-0, with Secretary Dority not voting.

Chair St. Germain opened the public hearing. No one present in the Council Chambers had any public comments to offer. Chair St. Germain then closed the public hearing.

Vice-chair Cough asked whether accessibility standards would create a zoning issue, as suggested. The ordinance holds that no non-conforming use can be expanded to occupy a larger area of land, said Code Enforcement Officer Chamberlain. If a bathroom needed to be enlarged, for instance, that would not be possible, even if it were for compliance with the Americans with Disabilities Act.

Vice-chair Cough asked whether the Oceanarium had continuously operated and not shut down. Jeff Cumming, executive director of the Oceanarium and Education Center, joined Mr. Coplon. Mr. Cumming said his understanding was that the previous owners were in continuous operation by meeting the standard of being open to the public for one day per year. The facility was open to the public for a single day this year, said Mr. Cumming.

Secretary Dority commented that the zoning change made “absolute sense.” Vice-chair Cough asked whether this would fall under spot zoning. Chair St. Germain said he felt that was addressed at the October 27, 2021 meeting but asked Mr. Coplon to summarize again.

There are three major reasons why this would not be considered spot zoning, explained Mr. Coplon. The first is that there is a discernible public benefit. The purpose of this particular institution is clear, he said. The second is that the rezoning will neither financially benefit the owners nor be detrimental to others. This is a nonprofit entity, so no individual or organization is profiting from it. As there are no close neighbors, he continued, there are no negative impacts on any adjacent properties. The third is that the rezoning is in accordance with the Comprehensive Plan; he outlined several of those reasons at the October 27, 2021 meeting, said Mr. Coplon.

The nature of the Marine Research District is that it can be placed on certain properties meeting the criteria, added Mr. Coplon. It does not need to be a contiguous swathe of land for this particular zone, rather appropriate properties that meet the criteria. Vice-chair Cough asked if the criteria Mr. Coplon had just reviewed were part of the LUO. Mr. Coplon said they are not, but that they are rather the general major categories as to what would trigger spot zoning. Chair St. Germain then summarized the board’s options.

Secretary Dority moved to recommend to the Town Council the written request application, LU-2021-01 - Oceanarium Education Center, as submitted as per §129-9. A. of the Land Use Ordinance. Ms. Chesler seconded. Vice-chair Cough said he would vote against the item because he said he didn’t believe it satisfactorily avoided spot zoning issues. He said he thought it was a great project, but said he did not have enough information to make a decision (vote in favor) at present. The motion carried, 4-1, with Vice-chair Cough voting against it.

b. Public Hearing on Land Use Amendment Completeness Review for LU-2021-02 – The Jackson Laboratory

Project Location: The request involves land located between Route 3 and Schooner Head Road, which includes Tax Map 115, lots 32, 33, 34, 35, 36, 37 and Tax Map 253, Lot 1. These parcels encompass a total of \pm 4.99 acres of land, according to town tax records, located in the Village Residential district. It also involves land located off Schooner Head road at Bear Brook, specifically Tax Map 253, Lot 4. This parcel encompasses \pm 2.04 acres of land, according to town tax records, located in part in the Village Residential District and in the Stream Protection District.

Applicant/Owner: The Jackson Laboratory, 600 Main Street, Bar Harbor, ME 04609

Application: The applicant is requesting that the Scientific Research for Eleemosynary Purposes boundary be expanded from its existing boundaries to include the following parcels, currently zoned as Village Residential: Tax Map 115, Lots 32, 33, 34, 35, 36, 37 and Tax Map 253, Lot 1, and the portion of Tax Map 253, Lot 4 located outside of the Stream Protection zone.

Ms. Chesler disclosed, as she had previously, that she works for The Jackson Laboratory (JAX). It was determined that there had previously been action taken to recuse her from such agenda items, and Chair St. Germain said that would continue. Ms. Chesler then left the room, and with her departure the voting membership of the Board was reduced to four members.

Michael McKernan, director of government and community relations for JAX in Maine, and John Fitzpatrick, senior director of facilities for JAX, were present to represent the applicant. Mr. McKernan thanked the board and explained the nature of the request and the property boundaries.

There are four reasons for making the request, he said. First, it would allow JAX to include these parcels in the denominator of the total lot coverage and would allow the lab to grow along its core campus rather than “sprawl out” to boundary properties. Second, it would allow for flexibility in nine residential units to provide shorter term housing to visiting students and scientists below the current 30-day minimum required in the Village Residential district.

Third, it would allow for unification of contiguous JAX properties into a common district where dimensional standards and lot coverage allowances are consistent. Finally, it would allow for general advancement of JAX’s 2016 master plan, which was previously shared with the Board.

Mr. McKernan briefly went through the four exhibits and said JAX would present information to help answer two questions raised by the board at a previous meeting: how the change would align with the Bar Harbor Comprehensive Plan and questions around spot and/or contract zoning. Mr. Fitzpatrick thanked the Board for hearing the request.

Mr. Fitzpatrick outlined several reasons why this would be in line with the Comprehensive Plan, and he went through some of them. Under Strategy 1-H, protection of the scenic approaches to

Bar Harbor: by making this change the front setback would adjust from 20 feet to 100 feet. JAX plans to eventually raze certain properties as they hit the end of their useful life and return the parcels back to their natural state. Under Strategy 1-G, protection of the coastal layer: JAX intends to mix and match the use of the houses for year-round workforce and for course and conference attendees, who have recently had a hard time finding accommodations on the island. Those guests are typically here from 7-14 days. JAX would also like to use it as a “landing pad” for new employees as they figure out where they’d like to live, Mr. Fitzpatrick explained.

Goal two of the Comprehensive Plan encourages orderly growth while preventing development sprawl, said Mr. Fitzpatrick. He said JAX feels that it is important to prevent sprawl on the campus as well — but with piecemeal zoning between several properties, JAX would be forced to develop outside the core property if it exceeded lot coverage of 50 percent. JAX would prefer to put all the properties in the denominator, use that to increase the lot coverage and build toward the central core of the campus where there is already a utility plant and existing development.

The proposal meets Strategy 2-I, Mr. Fitzpatrick said, because it eliminates properties from being landlocked and isolated by different zones and unifies contiguous properties under common ownership. Acadia National Park and roads are the only abutters on all of the properties in question. It also meets Strategy 3-F, he said, because it supports businesses providing year-round goods and services, as well as Strategy 3-A2, as it allows for denser development in core areas and supports employee recruiting and retention by allowing shorter- and longer-term housing.

“We don’t think our proposal conflicts with anything in the Comprehensive Plan,” he said.

Exhibit E, noted Mr. Fitzpatrick, was not required but was provided to show new setbacks and alleviate any concerns that JAX would put a research building or something not conducive to neighbors in the area. Setbacks would prohibit that, he said, and the topography also makes it essentially undevelopable. JAX heard the Board’s concerns around contract and spot zoning, said Mr. Fitzpatrick. He read definitions of spot zoning, which he’d found on the internet in several places. The proposed use classification is consistent with 117 acres in a “baseball throw’s” distance also owned by JAX. There is only one direct abutter, Acadia National Park. The expansion of the road setbacks further protects the Triangle area from development, he said.

“I don’t think there’s a developmental advantage to us for doing this,” said Mr. Fitzpatrick. He read a definition of contract zoning. JAX is not asking for any restrictions; neither is the Board. The expanded setbacks are more, rather than less, restrictive. For those reasons it is neither spot nor contract zoning, he said. This will not set a precedent, Mr. Fitzpatrick continued. District line redrawing has been done several times in the last several years, he said, citing several examples in the past few years (including the Oceanarium discussion in the prior agenda item).

Chair St. Germain thanked Mr. Fitzpatrick and Mr. McKernan for their summaries. He then opened the public hearing.

John Kelly, management assistant at Acadia National Park, spoke in favor of the change. The Park has worked “long and hard” with JAX to minimize visual impacts from the three sides from which the Park surrounds the JAX property. JAX has been very cooperative, he said. Concentrated development is preferable to sprawl. Any change to encourage and continue that approach is favorable, said Mr. Kelly. The planned 100-foot setback will also be more of an improvement to the scenic Acadia All-American Road, he added, which goes down Route 3.

With no other speakers, Chair St. Germain then closed the public hearing and opened the meeting to comments and questions from Board members.

Vice-chair Cough asked if JAX would definitely not use anything within the 100-foot setback. The setback would be one of the dimensional standards for the Scientific Research zone, explained Mr. Fitzpatrick. JAX would ask for whatever is in the setback to be recognized for its preexisting, nonconforming status, and able to be built back upon if needed but not expanded.

Vice-chair Cough asked a question about parcel ownership. Common ownership would indicate automatically that an owner has it in their property portfolio, correct? Not for purposes of zoning, replied Code Enforcement Officer Chamberlain. The zoning map would still be the determining factor on what the restrictions are. If it were in the same district, you could certainly include it as part of the lot coverage without changing lot lines but that cannot be done district to district, correct? Secretary Dority asked. Yes, replied Code Enforcement Officer Chamberlain.

Vice-chair Cough said it seemed like a good idea to him. He said it fits well within the overall layout and makes sense. He asked Mr. Fitzpatrick to discuss the smallest parcel. That is a residential lot, explained Mr. Fitzpatrick. It’s a roughly 1.7-acre lot with a portion in the Stream Protection zone. That would stay within Stream Protection. It’s a three-bedroom home with a three-car garage. There’s a shared garden space for JAX employees on that parcel. The house is used for six-month rotating internships for JAX graduate students, Mr. Fitzpatrick said.

Ms. Eveland thanked Mr. Fitzpatrick and Mr. McKernan and appreciated them providing her with a copy of the master plan, which was helpful to understand context. Ms. Eveland said she, too, had no problem with this proposal. She said she appreciated that it is consistent with the larger plan and with town planning.

Chair St. Germain voiced some thoughts he had on the proposal, including some concerns. Regarding the use of residential structures for less than 30 days, he said that was a discussion between the applicant and the Code Enforcement office. He said he was struggling with this proposal, because JAX’s most recent housing proposal (apartment buildings) began in the Village Residential district and was then moved to a different location, in the Scientific Research

district. He noted that now JAX was seeking to make Village Residential parcels contiguous to the campus to become Scientific Research. He said it seemed at odds, philosophically, with the outlook of housing here.

Chair St. Germain said he would support increasing lot coverage in the Scientific Research district or another way to enlarge the denominator by all lots within JAX's district, as in the PUD districts under §125-69 S. (4) (c), where lots in common ownership separated by a minor street may be considered contiguous for this purpose.

Part of the reason for the rezoning proposal, said Mr. Fitzpatrick, is to mix and match the use for short-, long- and medium-term rentals. The Scientific Research zone section of the ordinance is silent on 30-day uses, he said. Part of going in that direction is also lot coverage, he said. Maximum lot coverage in Village Residential is 50 percent with sewers and 25 percent without, Mr. Fitzpatrick said. The Scientific Research zone allows for 50 percent everywhere, he said.

"I would like to make all of our contiguous property one zone, one district, one set of dimensional standards," said Mr. Fitzpatrick, so that it isn't confusing for future developments. He said he thought this proposal was consistent with the residential project being constructed on Scientific Research zone property.

Chair St. Germain had voiced a concern about setbacks, and Secretary Dority asked for further explanation on that point. "If you have a structure that lies within a setback it can be extended but not exceed that setback," said Chair St. Germain, and gave an example: If there is a building that is 45 feet from what the setback is supposed to be in the 50 foot district, it can be extended in any direction as long as a greater non-conformity is not created. I didn't hear from the applicants that they weren't going to take advantage of that right that exists for everyone, said Chair St. Germain. Mr. Fitzpatrick said he had been silent on that. He said JAX does not have an intention to grow anything in that triangle, but said the Board would be relying on his word.

Chair St. Germain asked about JAX's internal calculations for lot coverage. Roughly 40 percent, answered Mr. Fitzpatrick. This would add almost 20 acres to the mix. Chair St. Germain said JAX is a unique entity in Bar Harbor, and said the land in question would almost certainly always be under JAX ownership.

Chair St. Germain asked whether the Snell House area adjacent to the brook would be able to be developed. The unshaded area on Exhibit E can't be developed, said Mr. Fitzpatrick, as the Maine Department of Environmental Protection would not allow it. It is not a named waterbody, he explained, but between stormwater drainage and discharge it would be identified as a natural resource that could not be filled in or built. It likely wouldn't be a 125- or 250-foot setback but topographically it couldn't be built on, Mr. Fitzpatrick told the Board.

Chair St. Germain asked how other Board members felt about the idea that properties that are in Village Residential right now would then fall under the Scientific Research zone and would be able to be used for short-term accommodations. Vice-chair Cough said he did not understand why there was not an Employee Living Quarters (ELQ) or Shared Accommodations (SA) in the calculation somewhere.

Vice-chair Cough asked a clarifying question about Snell and Calendar houses and how they are accessed. They're both accessed from Calendar Way, explained Mr. Fitzpatrick, which is not accessible from the main campus. Vice-chair Cough asked if that meant it would always be separate. It would be a challenge from a permitting standpoint, said Mr. Fitzpatrick. It will likely always be accessible only via Schooner Head Road. Is Snell House there just to add to the calculation? Vice-chair Cough asked. Mr. Fitzpatrick said the idea is to join the Calendar House property, incorporate Snell House property and directly attach it to the core, 80-acre campus.

Secretary Dority said he liked the idea of thinking about future lot coverage. He said he understood why JAX was "forced" to do this because of the height limit, parking space requirements and lot coverage issues. To make the lab answer questions for "never" is asking a bit too much, said Secretary Dority, who said he didn't feel there was "anything covert" going on. Secretary Dority said he fully supported JAX's rezoning request.

In the future, said Mr. Fitzpatrick, JAX would like to consider modifications regarding height. We'd like to look at roof coverage as well, he added, as air handling and mechanical systems have evolved since those rules were put in place, and the 30% limit forces JAX to build wider rather than taller.

Ms. Eveland said she has been vocal about concerns over losing housing stock but that JAX has many transient folks who require transient accommodations. The value of JAX having places for its people takes it out of the downtown trying to find housing for people. This makes it easier for us to manage public housing stock because you're addressing your particular need, said Ms. Eveland, which makes it a win for the community in terms of the housing stock management.

What kills me, said Mr. Fitzpatrick, is we've got at any time two to six housing units sitting fallow because there aren't people that need to be there for 30 days. We'd like to have the flexibility to mix and match, he said. I would support conversion of the Bear Brook Area and the Snell House, said Chair St. Germain. He said he was having trouble supporting the Triangle area.

I support this, said Vice-chair Cough. It would be nice if some of the land we're allocating in another parcel JAX owns might go back into circulation. There's a lot of land JAX owns that could do good for other housing. That would go a long way for every time a parcel is bought it's the land that goes with it for development, he continued. JAX eats up a lot of land outside the

campus, said Vice-chair Cough, adding that he would love to see something to go back into the town as a thank you. It would be “purely voluntary” he said, but “we’re in a housing crunch.”

Mr. Fitzpatrick said he understood that point and said that when he started as an employee there in the mid-1980s JAX was 300,000 square feet and slightly more than 400 employees. The Lab now has 820,000 square feet in Bar Harbor, 310,000 square feet in Ellsworth (after full build out), 225,000 square feet in Sacramento, 185,000 square feet in Farmington, Conn. and 400,000 square feet in Japan. Mr. Fitzpatrick said he did not want to leave his successor in a position where JAX gave 30 acres of land away and suddenly it can’t do what its mission is.

Vice-chair Cough mentioned continuously having properties come off the tax roll and out of general circulation. We’re trying to keep every bed full every night, said Mr. Fitzpatrick. Whether they’re taxable or not is between JAX and the town manager, and conversations around that are “continuing and productive.”

Chair St. Germain asked for a motion. **Secretary Dority moved that the board recommend to the Town Council the written request LU-2021-02 - The Jackson Laboratory JAX as submitted as per §125-9 A. The motion carried, 3-1, with Chair St. Germain voting against and Ms. Chesler not voting as she was recused and absent from the room.**

Following the completion of the vote and the agenda item, Ms. Chesler returned to the meeting. With her return, the voting membership of the Board returned to five.

c. Completeness Review for Site Plan Application SP-2021-04 — Atlantic Oceanside Employee Housing (ELQ)

Project Location: The property is located at 119 Eden Street, Tax Map/lots 101-001-000 and 101-002-000. The parcels encompass ±10.59 acres of land, according to town tax records. The subject land is in the Bar Harbor Gateway and the Shoreland General Development III zoning districts. The ELQ project is entirely located within the Bar Harbor Gateway zoning district.

Owner/Applicant: Witham Family, LLC, 215 High Street, Ellsworth, Maine 04605

Application: The construction of an Employee Living Quarter (ELQ) to house 16 employees on site at the Atlantic Oceanside Hotel & Conference Center. The building will be two stories with a separate living quarter on each floor, each with eight single bedrooms, kitchen and two bathrooms.

Chair St. Germain asked for a vote for his recusal, as he owns property directly across the street. **Vice-chair Cough moved to recuse Chair St. Germain. Secretary Dority seconded. The vote in favor of the motion was 4-0, with Chair St. Germain not voting.** Following the vote, Chair St. Germain left the meeting room. With his departure, Vice-chair Cough took over running the meeting and the voting membership of the Board was reduced to four members.

David Witham and Stephen Salsbury were present for the application. Mr. Witham said his company was excited to be able to act under the new zoning. He explained that the proposal is essentially for a duplex with eight bedrooms. The company built a similar structure at the Best Western several years ago and it has worked out quite well, particularly for employees who may not have cars, he said. The application meets requirements for ELQ and is in the Bar Harbor Gateway zone. It's fairly straightforward, said Mr. Witham.

Mr. Salsbury took the Board through a rendering of the project. Planning Director Gagnon said the modification of standards the applicant is requesting is not for this review because it's not a waiver for information. That is something the board would address at the next meeting, she said.

Ms. Eveland said she was glad to see someone taking advantage of this new use. Secretary Dority noted that the Board was willing to take comment even though there was no public hearing. There were no comments, however. Secretary Dority moved on to the waiver requests and asked if the board had any issues. Ms. Eveland asked a clarifying question about the process. Planning Director Gagnon responded.

Vice-chair Cough moved to grant the waiver requests by the applicant as listed in the checklist as such waivers will not unduly restrict the review process as they are inapplicable, unnecessary or inappropriate for a complete review. Ms. Eveland seconded. Ms. Chesler asked if there was a waiver missing. It was clarified that an exhibit was missing. The vote in favor of the motion was unanimous, 4-0), with Chair St. Germain not voting as he was recused and not present in the room.

Secretary Dority moved on to a review of the submission requirements. All that is missing is the letter from the Highway Department, said Planning Director Gagnon. Everything else has been submitted.

Secretary Dority asked about the elevation of the building. It is nowhere near the height limit, he noted, but there is a topographical difference of several feet. The building will be on a slope and there will be a walkout foundation, said Mr. Salsbury. There's nothing to indicate the grade change and how it was measured, said Secretary Dority. That would be good to include, he said.

Planning Director Gagnon asked if there would be a foundation. There is a foundation, said Mr. Witham. Code Enforcement Officer Chamberlain asked about storage. It will be a full walkout basement, explained Mr. Salsbury. There should be a plan for that as well, said Code Enforcement Officer Chamberlain. Code Enforcement Officer Chamberlain asked if the plan had been submitted to the Fire Marshal. Not yet, said Mr. Salsbury, but he was working on it. That would be a completeness item and could be a condition of approval, said Code Enforcement Officer Chamberlain.

Planning Director Gagnon asked a question about lot coverage calculations written on the plan. Are they for only the Bar Harbor Gateway District? Mr. Salsbury said it was for the whole campus. Planning Director Gagnon asked for the lot coverage to be broken down by district.

Vice-chair Cough gave a recap of missing items.

Ms. Chesler asked a question about lighting and a discussion on how lights would be shielded. Disability glare on Route 3 would be possible from that lighting, she said, and should be addressed under lighting requirements in the Land Use Ordinance, said Ms. Chesler. If they're under 1,800 lumens they're exempt from the standards, said Planning Director Gagnon, and she asked a clarifying question about Ms. Chesler's comment; Ms. Chesler responded and explained.

Ms. Chesler moved to find application SP-2021-04 Atlantic Oceanside – employee housing ELQ incomplete per Bar Harbor Land Use Ordinance §125-66 as it was missing the capacity letter from the Highway Department and light shielding. Vice-chair Cough seconded with the addition of needing a foundation plan, height detail for the building, lot coverage calculation per district and a letter from the Fire Marshal. Planning Director Gagnon asked the board to consider adding the scheduling of a public hearing on January 5, 2022. Vice-chair Cough added that to his second. Ms. Chesler was agreeable to all that had been added to her original motion. The vote in favor of the motion was unanimous, 4-0), with Chair St. Germain not voting as he was recused and not present in the room.

Following the completion of the vote and the agenda item, Chair St. Germain returned to the meeting. With his return, the voting membership of the Board returned to five and he resumed running the meeting.

d. Consideration of scheduling a public hearing for proposed Land Use

Amendment: Removal of the Two-thirds Majority Vote Requirement. This is a Town Council initiated proposed amendment.

Town Manager Cornell Knight presented the item. Chair St. Germain thanked him and said the Board understood what was before it. Chair St. Germain asked how members felt about stripping the Board of some of its power. Ms. Eveland said she supported the item and that she didn't view it as stripping the Planning Board of any unusual power. "I think it's an anomaly in terms of how the town makes its decisions," she said. She added, "The Planning Board has plenty of opportunity to make its perspective known and I think that asking the Planning Board to have an unusual weight in this decision is not consistent with good governance as I understand it."

Secretary Dority asked about the history of the two-thirds requirement. This has been an issue in the past, he said, but there seemed to be more contention now between the Planning Board and the Town Council. There is a community perception of discord between the two bodies, he said. He questioned if this was the right solution. He said he could see both pros and cons but said he

didn't feel he knew enough about the history: "It seems to have worked so well for so long. Why is it broken now?"

Chair St. Germain asked if Secretary Dority recalled in the early 1990s when the owner of the Bar Harbor Club wanted to change the use of the property to make it part of a different zone because they wanted to make it into a hotel. As Chair St. Germain recalled, the owners came to the Board and the Board didn't like the idea of the zoning change. The applicant went through with it but it required a two-thirds majority. That seemed like a good idea at the time, said Chair St. Germain — something the Board had some control over. Now what is being proposed, he said, is that even if the Board doesn't agree with something it would not matter. He said that would leave no check on the process, and said it takes power away from the Planning Board.

We've been through a number of charter commissions, said Vice-chair Cough, and it was never brought up. If the Board is 5-0 against something, it is clear the Board is set against it and wants to make that threshold and convey that to the town. "We are appointed by the Council but we are a separate body and we are charged with something different than what the Council is," he said.

If the Board voted 5-0 against recommending something, that would be on the ballot and people would see that and it would be a trigger for people, said Ms. Eveland. She said it had served as a guide for her over the years. She said she was uncomfortable, though, with the idea that there should be a different threshold for approval. She said she saw it as a consistency issue, also.

Secretary Dority was sympathetic to that. He asked if this threshold is an anomaly. Planning Director Gagnon was told anecdotally by an attorney at the Maine Municipal Association that there are a handful of municipalities with this requirement, out of hundreds across the state. Planning Director Gagnon reminded the board that under the §125-9 A. (4) the Board shall consider this request at a public hearing. The discussion is valid, she said, but that's not what the Board was tasked with doing at this meeting.

The Town Council voted 4-3, said Vice-chair Cough, which was "hardly a mandate." He noted the perception Secretary Dority referred to. "We have almost 50 years of history having that in the ordinance that the townspeople voted in," he said, and it has never been challenged. "I look at this as somewhat of a knee-jerk reaction to the current environment." He said such a reaction would be a mistake.

Ms. Chesler was also interested in the history and how often it has been invoked. She was in favor of a public hearing. "This needs to be looked at in light of the other changes, in terms of composition and requirements for membership on the Planning Board because I think all of those things fit together." If the Planning Board rejects something it's based on the fact that it has potentially more deeply engaged in the thing on the table. She wanted to learn more, she said.

Ms. Eveland asked Manager Knight if anybody in the town government had begun investigating the history of this. Some research was done, but no clear definitive answer had emerged, he said.

Ms. Eveland moved to schedule a public hearing on the proposed land use amendment, the removal of the two-thirds majority requirement, for Jan. 5, 2022. Secretary Dority seconded. With no further discussion, the vote in favor of the motion was unanimous, 5-0.

VII. OTHER BUSINESS

a. Signing of corrected plan for Jones Marsh (PUD-2021-01)

Mr. Salsbury explained that he had mislabeled a right-of-way and noted it on the rendering. Chair St. Germain asked about the order of operations. Planning Director Gagnon replied that it was depicted correctly but labeled incorrectly. There was a question about the Planned Unit Development (PUD) number. It was determined to be PUD-2021-01. Chair St. Germain asked if all members were satisfied that it was basically a typographical correction. He asked for a motion to reflect that the previous approvals for the PUD remain in place but that the subdivision plan had been updated to reflect the correct dimension of the right-of-way.

Secretary Dority moved that for PUD-2021-01 subdivision plan, the previous subdivision plan remain in place but be updated to reflect new dimensions on the plan submitted 12-01-2021. Every other approval remains the same. The road dimension that was mislabeled but accurate on the plan, to scale, has now been labeled at 60 feet rather than 50 feet. Vice-chair Cough seconded. Chair St. Germain asked whether it mattered it was a right-of-way, not the road. Secretary Dority amended his motion to say right-of-way, Vice-chair Cough amended his second. The motion vote in favor of the motion was unanimous (5-0).

b. Review and approve the Bar Harbor Planning Board Calendar for 2022 (and early 2023)

This year there are no changes to the first Wednesday of the month schedule, said Planning Director Gagnon, which is fortunate. There are no early submittals either, it is just the regular calendar. **Secretary Dority moved to adopt the calendar. Ms. Eveland seconded. The motion carried unanimously, 5-0.**

c. Review Bar Harbor Land Use Ordinance List of Amendments

Planning Director Gagnon introduced the item. Staff are trying to keep track of items that come up and also to categorize what might be considered low-hanging fruit, she explained. She said the feeling was that working on PUDs would not be at odds with the outcome of the Comp Plan work now underway. Board members thought there could be a lot to gain as well.

Chair St. Germain asked a question about the timeline of the Comprehensive Plan and whether there was an expected date for a finished product. A consultant has been selected, said Planning Director Gagnon, after being sent to dozens of firms. Three proposals were received. The head

firm is Resilience, teaming up with FB Environmental. They are looking at an aggressive timeline of a year, followed by compliance with the state, which could take several months, said Planning Director Gagnon. It could appear on the warrant for a vote in November 2023.

Secretary Dority asked what the Board's role will be with the Comprehensive Planning Committee. The Comprehensive Planning Committee is essentially an advisory committee, said Planning Director Gagnon. Its charge is to help steer the project, make sure residents are being heard and that the plan is consistent with the Growth Management Act. All the boards and committees, stakeholders and residents will be involved in the process. Ms. Eveland asked if the Town Council was ready to appoint residents to the advisory board. That is planned for December 7, 2021, said Planning Director Gagnon.

The advisory committee is fairly large, said Planning Director Gagnon. Those who are interested can attend all meetings. Ms. Eveland asked if there would be an opportunity for the Board to have direct communication with the consultant. Yes, said Planning Director Gagnon. Chair St. Germain said the Board had an opportunity to continue to work on many of the issues facing the communities. Comprehensive Plans give a higher level vision and a path forward, said Planning Director Gagnon. Fine details will come out of the other town boards and committees.

Planning Director Gagnon gave a brief overview of the highlighted items slated for potential amendment. Chair St. Germain asked what the idea was behind amending the definition of multifamily. Typically, that would be a large building with multiple dwellings units, explained Planning Director Gagnon. In Bar Harbor it appears a multifamily could be several single families on one lot. That arose during a discussion with an applicant, said Planning Director Gagnon, and staff would like to examine it. It's a barrier to housing, said Code Enforcement Officer Chamberlain. I'm happy to see the item included, said Chair St. Germain. He thanked staff for preparing the list and organizing it.

d. Discuss the PUD draft work plan

Planning Director Gagnon introduced the items one by one. She said regardless of whether it is an official meeting or a workshop, people are interested in participating in discussion. The Board could decide to take comments before, after, or during the meeting, whatever it thought was best.

Planning Director Gagnon said it would be good to have a conversation around tools for inclusionary housing. Secretary Dority suggested hearing from staff on why property owners are not taking advantage of certain tools. Maine State Housing Authority said they would be happy to present on what is out there, said Planning Director Gagnon, and on general information and housing data it has for the town of Bar Harbor.

Ms. Chesler asked if the Board could hear from organizations using models beyond those employed by Island Housing Trust and Maine State Housing Authority. Is there precedent for

private property to not go into a nonprofit land trust and be used in a similar fashion? There are other models, said Planning Director Gagnon, including ones that allow property owners to realize the full value of property appreciation once they sell. Those could be discussed, she said. Chair St. Germain said he had seen something along the lines of what Ms. Chesler was curious about and said he could forward information to the board. It was called a land bank, he said.

Planning Director Gagnon said she could draft an agenda including different speakers on affordable housing. She moved through the list. If the Board takes the time to get organized, she said, it will help keep everyone on the same page. We'll learn tools and ideas that may be applicable elsewhere. There is a lot of information and many good ideas out there in terms of housing, she said, and hopefully it will transcend the PUD discussion. Ms. Eveland said it seemed like a smart approach. Other board members agreed and thanked staff for the work.

e. Discuss the order of the agenda (reversing items VIII and XI)

Planning Director Gagnon explained the reasoning behind the item's inclusion. There was a discussion regarding the order of the items. There seemed to be some inconsistencies between Chapter 31 online and what was recently adopted. It was determined that more information was necessary. "We didn't know what was in the box until we opened it," said Ms. Eveland, "now we've opened the box but we've got to fix it."

Vice-chair Cough asked if Board members had thoughts on adding an item titled "public hearings" before the board's regular business. People might pay more attention in that case, he said. That's already done, said Planning Director Gagnon, but having its own separate roman numeral to call more attention to it would be a "great idea."

Secretary Dority asked the difference between public comment and public hearing. They're separate in that public comment is on something that's not a pending project or on the day's agenda, said Chair St. Germain. A public hearing is on items on the agenda. Planning Director Gagnon asked if the board would like to adopt this at the next meeting. A brief discussion followed; it was determined that for next meeting Planning Director Gagnon would bring forward a revised version, working on striking out amending rules of procedure and figuring out what was going on with the Planning Board's section of Chapter 31.

VIII. BOARD MEMBER COMMENTS & SUGGESTIONS FOR THE NEXT AGENDA

Chair St. Germain told the Board to have a great December and enjoy the new year. Ms. Eveland asked a question about notification or sense of permission in terms of an excused absence and the process, under the Remote Participation Policy. During her last absence, she did not state why she was out of town, although she indicated she could be available remotely.

Are there qualifying reasons for an absence? Ms. Eveland asked. Secretary Dority said on other boards and committees members are not asked why they are absent. Ms. Chesler said she had

always interpreted it as announced versus unannounced. An excused absence is typically accompanied by prior notification. It is not clear there is a process for approving the absence, said Ms. Chesler. An email comes in and the chair should determine whether the absence is excused or unexcused and whether the member plans to participate remotely, said Chair St. Germain, adding that was why he previously asked for a deadline on being notified.

Planning Director Gagnon noted that the Council voted for a seven-member Planning Board. She noted that there were improvements in rules and procedures identified by staff that would more reflect how the Board functions in reality and asked whether that should be brought forward.

Vice-chair Cough asked whether remote participation would be allowed for workshops. Ms. Chesler supported remote participation to encourage as much public input as possible. Workshops aren't usually televised, Planning Director Gagnon pointed out. Maybe a better solution would be to have some expressly public workshops where the public could readily attend remotely. Planning Director Gagnon explained that was why she included in the process public information sessions. Vice-chair Cough wondered whether Board members would be allowed to participate remotely. I don't see why we wouldn't, said Ms. Eveland. Vice-chair Cough, Ms. Chesler and Secretary Dority agreed.

IX. REVIEW OF PENDING PLANNING BOARD PROJECTS

Assistant Planner Fuller noted there would be two public hearings in January, following the Board's action that night. The Harbor Lights project will likely return eventually, said Planning Director Gagnon.

X. ADJOURNMENT

At 6:58 PM, Vice-chair Cough moved to adjourn the meeting. Secretary Dority seconded. The vote in favor of the motion was unanimous, 5-0.

Minutes approved by the Bar Harbor Planning Board on February 2, 2022:

**ORIGINAL
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02.24.22

Date


Millard Dority

Secretary, Bar Harbor Planning Board